

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS DIAZ,
Plaintiff,

v.

OFFICER JEREMY DREW, et al.,
Defendants.

Civil Action No.
16-11579-NMG

ORDER

GORTON, J.

1. The motion for leave to proceed in forma pauperis is ALLOWED.

2. Pursuant to 28 U.S.C. § 1915(b)(1), the Court assesses an initial partial filing fee of \$3.33. The remainder of the fee, \$346.67, shall be collected in accordance with 28 U.S.C. § 1915(b)(2).

3. The Clerk shall send a copy of this order to the treasurer of the institution having custody of plaintiff.

4. The Clerk shall issue summonses as to all defendants except "Any all Officials Involved in the Proceedings of Disciplinary Tickets and Grievances," and "John Does" because neither appellation adequately identifies a specific person. Although the use of fictitious names to identify defendants is not favored, situations may arise where the identity of an alleged defendant cannot be known prior to the filing of a complaint. See Martínez-Rivera v. Ramos, 498 F.3d 3, 8 (1st Cir. 2007). If, through discovery, the plaintiff discovers the true names of these unnamed defendants, he should act promptly to

amend the complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure to identify the correct parties and their alleged misconduct and to dismiss any baseless claims. See id. at 8 n.5

5. The plaintiff shall ensure that each defendant as to whom a summons issues is served with (1) the summons; (2) the complaint; (3) the motion for injunctive relief and supplement thereto; and (4) this order. Service must be within 90 days of the date the summonses issue. Service must be made in accordance with Rule 4 of the Federal Rules of Civil Procedure and Local Rule 4.1.

6. Because the plaintiff is proceeding in forma pauperis, he may elect to have the United States Marshals Service ("USMS") complete service with all costs of service to be advanced by the United States. If so asked by the plaintiff, the USMS shall serve a copy of the summonses, complaint, motion for injunctive relief and supplement thereto, and this order upon the defendants as directed by plaintiff. The plaintiff is responsible for providing the USMS all copies for service and for completing a USM-285 form for each party to be served. The Clerk shall provide the plaintiff with forms and instructions for service by the USMS.

7. The motion for the appointment of counsel is DENIED WITHOUT PREJUDICE to renewal after the defendants have responded to the complaint.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated: 9/21/16